

Appl. No. : 10/517,908
Filed : January 30, 2006

REMARKS

By way of summary, Claims 1-5, 7-22, and 24-31 were pending in this application. In the outstanding Office Action, Claims 1-4, 7, 13-19, 21-22, and 26-31 were rejected under 35 U.S.C. §102(b) as being anticipated by Boudreault (U.S. 5,186,714). Claim 20 may have been rejected under §102(b) as being anticipated by Boudreault. Claims 5, 8-12 and 24-25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Boudreault in view of Atchley (U.S. 4,451,257) and/or Rosenberg (US 5,100,395). No amendments have been made to the application. Accordingly, Claims 1-5, 7-22, and 24-31 are currently pending.

1. The Boudreault Reference

In the outstanding Office Action, Claims 1-4, 7, 13-19, 21-22, and 26-31 were rejected under 35 U.S.C. §102(b) as being anticipated by Boudreault (U.S. 5,186,714). Claim 20 may have been rejected under §102(b) as being anticipated by Boudreault. Claims 5, 8-12 and 24-25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Boudreault in view of Atchley (U.S. 4,451,257) and/or Rosenberg (US 5,100,395). Thus, all rejected claims are rejected in light of Boudreault. Applicant respectfully disagrees with these rejections because the Examiner has mischaracterized Boudreault with respect to its disclosure regarding vacuum pressures.

Boudreault discloses a multifunctional surgical instrument with tubes for connection to a source of vacuum. Boudreault Abstract. Boudreault's only disclosure discussing the source of vacuum is at col. 5, lines 1-5:

The handle 11 is sized and shaped to receive and hold the suction and irrigation cartridge 20 whose purpose is to make the instrument 1 operatively connectable to **a source of vacuum 2 of say, about -500 Hg**, and/or a source of flushing liquid 3.

Notably, Boudreault does not disclose a unit of measure for vacuum or for pressure in its specification. A value of “- 500 Hg” is not a measurement of pressure, or vacuum. One Torr is equal to 1 mmHg. It is unclear what “-500 Hg” is supposed to represent, as Boudreault fails to provide a measurement of its source of vacuum in any standard format. It is not clear if Boudreault intends to discuss -500 Hg in terms of millimeters, inches, or some other measure, as Boudreault only lists “Hg.” Boudreault provides no other discussion of the vacuum pressure, nor does it contemplate or enable the levels of vacuum pressure claimed in the present application.

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There is no indication, disclosure, teaching or suggestion that Boudreault is contemplating anything but standard vacuum sources.

Claim 1 recites, among other things, a “first end adapted to connect to a vacuum source of at least approximately 125 torr.” Applicant respectfully disagrees with Examiner’s characterization of Boudreault disclosing any vacuum source or system approximating 125 torr. Office Action p. 2. As stated above, Boudreault only contemplates a vacuum source in terms of a non-discernable measure of “- 500 Hg.” Without reciting more, one skilled in the art could only conclude from Boudreault that any vacuum used by the disclosed device does not deviate from standard vacuum pressures. As stated in the Applicant’s specification, “[e]xisting chest drainage systems conventionally use a low vacuum pressure. In such systems, the vacuum pressure applied to the chest tube is normally -20 cmH₂O (= 14.7 torr) or less. A dry unit with a pressure gauge may use higher pressure, but only slightly higher.” Applicant specification at [0007]. The Applicant’s specification goes on to state, “[e]xisting chest drainage systems use a conventional vacuum pressure of 14.7 torr. Presently, vacuum pressure in and around the range of 25-35 torr is considered to be ‘high suction pressure.’” Applicant specification at [0022].

Claim 15 recites, among other things, a “high vacuum pressure body cavity drainage system, comprising ... a vacuum source of approximately 125 torr or greater.” As discussed above, Boudreault discloses no device for working with a vacuum source of approximately 125 torr or greater. Furthermore, Claim 15 recites, among other things, that “the suction force conveyed at any of the side holes is less than capillary pressure in the animal.” None of the references, including Boudreault, contemplates or compares pressure at any of the holes with capillary pressure in any animal. None of the cited references discloses, teaches, or contemplates the use of “a vacuum source of approximately 125 torr or greater” with “the suction force conveyed at any of the side holes is less than capillary pressure in the animal” as claimed, in part, in Claim 15.

Although Claim 20 is not explicitly described in the Detailed Action at page 6, it appears Claim 20 is rejected under Boudreault in Claims 21 and 22 when they state “Boudreault (abstract, figures 1-4) the highly efficient body cavity drainage system described in claim 20...” Claim 20 recites, among other things, “a vacuum source of approximately 125 torr or greater.” As discussed above, Boudreault discloses no device for working with a vacuum source of

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approximately 125 torr or greater. Claim 26 recites, among other things, “means for receiving a vacuum source of approximately 125 torr or greater.” As discussed above, Boudreault discloses no device for working with a vacuum source of approximately 125 torr or greater.

Thus, Applicant respectfully submits that Boudreault fails to teach or suggest all the limitations of independent Claims 1, 15, 20 and 26. Accordingly, Applicant respectfully requests that the rejection of claims under § 102 based on Boudreault be withdrawn.

Claims 2-4, 7, 13-14, 16-19, 21-22, and 27-31 depend from independent Claims 1, 15, 20 and 26 and are allowable for the same reasons set forth above with respect to Claims 1, 15, 20 and 26 in addition to the patentable subject matter contained therein. Accordingly, Applicant respectfully requests that the rejection of Claims 1-4, 7, 13-19, 21-22, and 26-31 under § 102(b) based on Boudreault be withdrawn.

2. Atchley and Rosenberg References

Claims 5, 8-12 and 24-25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Boudreault in view of Atchley (U.S. 4,451,257) and/or Rosenberg (US 5,100,395)m stating “Boudreault does not disclose wherein [sic] least 100 holes are formed into the wall of said tube or the size of the holes or tube with a valve.” Neither Atchley nor Rosenberg disclose any sort of vacuum source of approximately 125 torr or greater, and thus fail to remedy the shortcomings of the Boudreault reference with regard to its failure to disclose a discernable vacuum pressure as described above. Thus, the Boudreault, Atchley, and Rosenberg references, alone or in combination, fail to disclose, teach, or suggest vacuum sources or pressures of approximately 125 torr or greater. Applicant respectfully requests the withdrawal of the rejections of Claims 5, 8-12 and 24-25 under 35 U.S.C. §103(a) to these references.

3. Conclusion

Applicant respectfully submits that the claims are in condition for allowance. Furthermore, any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used. Any remarks referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as a whole. Applicant respectfully traverses each of the Examiner’s

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rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein.

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or prior art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Applicant respectfully requests that a Notice of Allowance be issued at the earliest opportunity. However, if the Examiner has any questions or concerns, he is invited to telephone Applicant's attorney of record so that extended prosecution of this application may be avoided. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,
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